#### A: Colleges will not restrict any constitutionally protected speech, except in the case of sexually explicit nonconsensual images

Spiros et al. <https://docs.legis.wisconsin.gov/2013/related/proposals/ab462.pdf> SPIROS, JOHNSON, BALLWEG, BARCA, BERCEAU, BIES, BROOKS, CZAJA, KAHL, KLEEFISCH, MARKLEIN, NASS, OHNSTAD, A. OTT, PRIDEMORE, THIESFELDT and TITTL, cosponsored by Senators VUKMIR, L. TAYLOR, LEHMAN and RISSER. State of Wisconsin: 2013-2014 Legislature

Under current law, **no one may** photograph, videotape, or otherwise **capture an image of a nude or partially nude person (depicted person) without** the depicted person’s **knowledge and consent. A person who does so,** or who **possesses, reproduces, or distributes the image with the knowledge that the image was captured without the depicted person’s knowledge or consent, is** generally **guilty of a Class I felony**, and **may be fined** up to $10,000, **imprisoned** for up to three years and six months, **or both**. Under this bill, **no one may** reproduce, distribute, exhibit, publish, transmit, or otherwise **disseminate** (distribute) **an image of a person who is nude or partially nude or who is engaging in sexually explicit behavior without the consent of the person, regardless of whether the depicted person consented to the capture of the image.** A person who does so is guilty of a Class A misdemeanor and may be fined up to $10,000, imprisoned for up to nine months, or both. Under the bill, the prohibition does not apply if the person depicted consented to the distribution for commercial purposes. The bill creates exceptions for parents or legal guardians who distribute otherwise legal representations of their minor children for noncommercial purposes, for law enforcement officers acting in their official capacity, and for persons who distribute the representations for the purpose of reporting or assisting with the investigation of a crime. Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a 1 22013 − 2014 Legislature − 2 − LRB−2771/3 PJH:wlj&eev&cjs:jm ASSEMBLY BILL 462 report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted**.**

#### Mutually exclusive

Greenfield, Scott H. Suddenly Unconstitutional. https://blog.simplejustice.us/2016/08/05/suddenly-unconstitutional/

Notably, to the extent any contention has been proffered that revenge porn would fit within a categorical exception to the First Amendment, the argument has been that it would be obscenity. Judge Howard disposed of that argument easily. While there is argument that such revenge pornography should be considered obscene simply because of the intent it is used, there is no present authoritative law that would allow this court to take such a step in enlarging the area of unprotected speech under the First Amendment. See Samantha Scheller, A Picture is Worth a Thousand Words: The Legal Implication of Revenge Porn, 93 N.C.L. Rev. 551, 568-69 (2015), for this argument and its limitations. In other words, an image that wouldn’t be obscene under one set of circumstances doesn’t become obscene because of malevolent intent. But, of course, intent is the aspect of these revenge porn laws that its advocates fight most strenuously against, lest anyone not come within their reach. So what’s the issue? What’s the lesson? Unlike historical crimes, which prohibit conduct in which people engage with a level of culpability that compels societal condemnation and retribution, advocates are pushing to eliminate bad outcomes, as reflected by the heart-rending stories proffered by the advocates of ever-increasing criminalization, without regard to conduct or intent. In NYC, the mayor wanted to end people being struck by vehicles. Certainly a worthy purpose. But it can’t be accomplished by criminalizing outcome alone, without regard to whether it happened because someone engaged in criminal conduct or just made a mistake. With revenge porn, as has been discussed here at enormous length, the harm that accrues from images and information on the internet to some is similarly undeniable, but that doesn’t mean the Constitution no longer applies. The point is that we’ve transitioned to a point where sad stories of harm are no longer considered unfortunate outcomes, but that every sad story demands a crime. No bad outcome is tolerable. Someone must pay. The historical reluctance to find criminal laws facially unconstitutional is coming apart at the seams, not because courts are becoming softer touches but because the laws being enacted no longer reflect the basic requirements of a crime or adherence to constitutional limitations. Whenever something bad happens, someone cries for a new crime. That’s not the answer. The law cannot provide a solution to every wrong that happens. The law is not capable of solving every bad outcome that happens. Stercus accidit. \*This, of course, hasn’t stopped the revenge porn advocates from arguing to the contrary, and pushing Rep. Jackie Speier to propose a federal law that would subvert the safe harbor of Section 230 of the Communications Decency Act in the process. To date, no court has held a revenge porn law constitutional.

#### Revenge porn distorts discourse – posters gain anonymity and are shielded from consequences and criticism of their actions while targets are excluded from society

Scott R. Stroud 14. (Associate Professor of Communication Studies, University of Texas at Austin) The Dark Side of the Online Self: A Pragmatist Critique of the Growing Plague of Revenge Porn. Journal of Mass Media Ethics, 29:168–183, 2014. NP 4/12/17.

An almost universal feature of revenge porn sites is that they allow for anonymous submission of “user generated content.” The “users” of online sites that submit or produce photo content are what Bruns (2007) creatively dubs “produsers.” This section will use the three-fold method of analysis derived from Dewey’s pragmatist ethics to analyze the moral dimensions of such user-generated content. Common characteristics of these sites are (1) user-submitted content of (2) identified/identifiable victims with (3) links to verifying Internet sources (social media sites). While they are not forums per se, they also tend to share the feature of (4) allowing user-submitted comments about the content posted. Beyond these four features, sites can differ. Some feature limited webmaster commentary, whereas others leave all commentary to user posts. Some sites require verifying social media links to be submitted with the original picture content, whereas others seem to allow this information to come forward in the ensuing user comments concerning the pictures submitted. Some sites might feature all female content, whereas others feature male and female content. Virtually all of these sites include text on the submission page that transfers responsibility for concerns over the image’s procurement, the verification of age requirements, and the impacts of posting them to the anonymous submitter, not the website in question. The content submitted to such sites includes nonnude, semi-nude, and fully nude pictures of identified individuals. Some postings include only nonnude photos and a derogatory narrative; this seems intended to connect that individual to an embarrassing site. ‘‘The Good’’: Desire and Harm in Revenge Porn Revenge porn significantly affects a variety of interests that pragmatists would group under “the good.” This study will limit itself to the cases of users posting pictures of others, even though there is evidence that a not-insignificant amount of submissions to some sites are selfsubmissions from those seeking an unusual form of Internet notoriety (Hill, 2012). Posting revealing photos of nonconsenting others along with identifying information potentially leads to humiliation and embarrassment and could increase the potential for online and “real life” harassment. Millner (2013) cites two cases of women victimized by the posting of revenge porn. These cases are interesting precisely because they show the ambiguity in the seemingly simple practice of posting such hurtful content. One woman sent nude pictures to a boyfriend, who allegedly posted these pictures to a revenge porn site after their breakup. Another woman is unclear on how her pictures made it to the Internet; some of these photos “were taken to track her weight loss progress and never left her possession” (Millner, 2013). Yet both of these Downloaded by [University of Texas Libraries] at 13:10 18 July 2014 174 STROUD women reported humiliation at the prospect of their families, friends, and employers seeing these pictures. Clearly, their happiness was not enhanced by the posting of such materials, nor was it a desired consequence from their perspective that such materials were posted. This harm is enabled by the anonymity provided to the posters of this information and those who run the sites that allow for such posting. As research on user-generated content for news sites has determined, anonymity often increases incivility and immoral behavior (Singer & Ashman, 2009). In the case of revenge porn, we see spurned lovers pursuing a course of trying to harm their former relational partners by anonymously posting content that the ex-partner would probably not have shared with the public. More perplexing are the cases where someone who does not know the person pictured posts content. For instance, Rankin (2013) reports one case that involved a female victim whose nude pictures were shared with an ex-boyfriend who committed suicide two months before these pictures were posted to a revenge porn website. Perhaps the ex-boyfriend shared them with others before his death; it may have been these others who took a perverse pleasure in hurting the original victim through the posting of her pictures. This points at another interest in these cases—the pleasure, no matter how perverse, individuals feel in the exercise of their powers of expression. Some of this expression is aimed at procuring revenge for perceived harms; yet others might simply enjoy having the power to harm this identifiable individual through expressing content or views concerning that person. Anonymity is an enabling factor in these online interactions. As Donath (1999) points out, the Internet allows for new-found power to remake yourself, or to create a new online self through the deployment of self-created cues. In the case of revenge porn, anonymity plays an important role in enabling, encouraging, and shaping the conduct of posting individuals. Revenge porn victims are harmed precisely because they lose their anonymity—they are raised out of the anonymous masses and connected to specific nude pictures that will forever surface in Internet searches involving their name. Posters often are encouraged to post their victims because they do not have to reveal their real name. They can remain anonymous. In terms of the victim’s identity and harm incurred, we can conceptualize three distinct levels of posting that implicate commensurate levels of anonymity of the pictured individual. First, individuals could have their revealing photos aired on the Internet but not identified. This case will most likely result in the least amount of displeasure or unhappiness since it is unclear that these photos will be linked in the future to those individuals by others they know or with whom they interact. Second, individuals could have identifying information posted along with their photos, but in the context of a large inter-state or international audience. This appears to be the case on websites that allow searches by state, or that involve individuals from a wide geographic area. The odds are, in such cases, that any given viewer of this sort of site will not have cause to meet or make actual contact with the pictured individual, although online harassment definitely could follow (Dodero, 2012, April 4). The final class of posting is one that posts in such a fashion that there is a high probability that viewers will or can come into actual physical contact with pictured individuals; this seems to be the sort of small-town instances that Rankin (2013) reports on in the case of a regionally focused revenge porn site. In all of these cases, it seems like the niche-focusing capabilities of the Internet combine with anonymous online selves to impact (in varying extents) the happiness of actual, real-life selves. Short of extraordinary legal maneuvers, the shield of online anonymity effectively facilitates this result by safeguarding posting individuals from most ordinary consequences such as legal action, shame from others, or retribution. Yet such a pleasure of expression clearly exists alongside a palpable Downloaded by [University of Texas Libraries] at 13:10 18 July 2014 PRAGMATISM AND REVENGE 175 displeasure caused to the pictured individuals. It does not seem outweighed by the stated goal of many of the individuals running such sites—to simply make money.

#### Non-consensual image distribution violates privacy --that’s a necessary right within Deweyan democracy

Scott R. Stroud 14. (Associate Professor of Communication Studies, University of Texas at Austin) The Dark Side of the Online Self: A Pragmatist Critique of the Growing Plague of Revenge Porn. Journal of Mass Media Ethics, 29:168–183, 2014. NP 4/12/17.

Most accounts of revenge porn begin and end with the harm it bestows upon its victims. Yet pragmatist ethics wants us to look not only at individual interests based in desire and pleasure but also at the systemic interactions between individuals. Dewey’s notion of “the right” focuses our attention on the coordination of action among individuals pursuing paths they see as conducive to their happiness. Revenge porn implicates two formal rights: the right to express one’s opinions on matters relevant to themselves and others, and the right of individuals **to** maintain some control over their private lives. Where does one right end and the other begin? Anonymous online posting of opinions and experiences seems to be a good thing in many cases. It facilitates the free sharing of one’s thoughts at a remove from retribution for those thoughts. Yet in many cases, such expression could be speculative or not fully accurate (Black, 1994). The complexity of interactive expression on the Internet makes its analysis more multifaceted than it may appear (Kuhn, 2007). In the case of revenge porn websites, “produsers” can submit photographic content to these sites. Some require the simultaneous submission of “verifying” social media links and the pictured individual’s name, whereas other sites appear to just want photographs. Most sites feature a comment or discussion section that allows individuals to post anonymous comments about the pictorial content. Dewey’s ethics would attune us to the realities of this discussion. Some of the content that comprises this online discussion includes information about the pictured individual, including social media links. Much of the posted discussion focuses on the individual portrayed and is often crude and sexual in nature. The negativity of such commentary is to be expected, given research on anonymous online commentary and its relation to incivility (Hlavach & Freivogel, 2011; Singer & Ashman, 2009). The same anonymity that allows individuals to post incriminating content allows some individuals to rise to their defense. Some complain about the whole enterprise of revenge porn, wondering who would ever post such pictures. Other commenters rebut negative comments about the portrayed individual’s attractiveness or character, often indicating that they find that individual beautiful, sexually attractive, or, in cases where the anonymous poster seems to have personal knowledge of the pictured individual, a good person. Anonymity allows for the harmful posting of personal information and pictures, as well as the expression of others who want to undo some of the harm that the airing of such content might cause. Free expression is both disease and medicine in the highly interactive world of websites hosting user-generated content. The most prominent reason given for coordinating the activities of all involved in such a way as to restrict the production and posting of revenge porn content is the concern of privacy, a frequent source of worry with digital technologies (Cooper, 2008). For pragmatist ethics, “privacy” would denote the culmination of our contextualized ethical balancing of the freedoms of others and the desires for individuals to maintain control over their lives, as opposed to being the fruit of an a priori effort of ethical theorizing. In the American legal context, Samuel Warren and Louis Brandies (1890) appeal to a previous notion of privacy as “being let alone,” or what Tavani (2007) calls a theory of privacy as “nonintrusion.” Nonintrusion accounts of privacy Downloaded by [University of Texas Libraries] at 13:10 18 July 2014 176 STROUD are closely related to “seclusion accounts,” which want to reserve a space for the individual to be free from interference from others. The Internet vastly multiplies concerns over the diminishing sphere of private life. Those who post revenge porn without the consent of the pictured individuals seek through their actions to harm another person by making the private public. Such publicity is presumably not wanted by the individual in the photograph. Many of the victims of revenge porn feel afraid to engage in normal activities such as going out, primarily because of safety concerns and feelings of embarrassment (Millner, 2013). This can be attributed to their expectations of privacy being violated by the posting of material that they never thought would see the light of day.

#### Discussion resultant from image sharing undermines tenants of critical inquiry constitutive of a Deweyan democracy

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The third aspect pragmatist ethics calls us to examine concerns “the virtuous” or the dimension of our conduct that elicits or involves public reaction or judgment. Many revenge porn posters, who submit either pictorial content or subsequent comments, seem upset at the alleged conduct or character of the pictured individuals and seek revenge. Many posters assert that a given pictured individual was a cheater or “deserved” the shame that came with his or her nude pictures being posted for public viewing. What exactly grounds this pursuit of communal, public revenge, an aspect clearly related to Dewey’s dimension of public apperception of virtue or vice in moral interactions? In the case of revenge porn submitted out of the felt need to shame former relational partners, matters are difficult to ascertain with certainty, since the veil of the online self typically shields all the posters of such content. What you do have, however, is the evidence left on these sites: photos that must be known to cause embarrassment to the pictured individual and commentary (from either the original poster or additional individuals, it is often difficult to tell) that such an individual has acted in a nonvirtuous manner. Often, these comments assert accusations of harmful or nonvirtuous sexual behavior toward the original poster such as infidelity; in other cases, commenters act as third-person observers of such alleged nonvirtuous behavior such as sexual promiscuity and infidelity. The avenger often seems personally linked to the pictured individual in many cases. Revenge porn also features “unrelated avengers,” individuals who post a pictured individual not because of some harm they have endured but out of some spiteful need to punish an individual who putatively “deserves” it. Barton (1999) is partially correct in his argument that revenge implicates a pleasure not in the mere suffering of another person, but “pleasure in the suffering of another who (is believed to have) harmed one” (p. 13). This must be altered to account for individuals who take pleasure in the revenge on unrelated persons Downloaded by [University of Texas Libraries] at 13:10 18 July 2014 178 STROUD who, it seems to the avenger, to have committed some noteworthy moral lapse or harm on an undeserving, but unknown, individual. The tangled contours of the wild justice of revenge porn involve anonymous, unrelated individuals posting harmful pictures to seek revenge on others that they do not know beyond the material posted. For personally related posters or nonrelated posters, the motive of revenge for alleged moral infractions or harms appears to be a significant and common motive. The problem with such a diffuse system of revenge seeking is that it becomes virtually assured of error. The information that unrelated others act upon is largely unverifiable at best and one-sided hearsay, gossip, or outright untruths at worst. None of the measures of critical thinking or evidence gathering that is present in court proceedings or journalistic practices is evident; instead, it becomes the worst kind of speculation in the hands of anonymous posters.

# F/L

### A2 Copyright

#### Copyright law fails to deter

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Other civil claims fail to provide relief for revenge porn victims. Copyright claims provide one potential recourse, but the instances are so limited it is functionally useless.98 Under copyright law, reproduction and publication rights require written permission from the copyright holder.99 However, a victim can only file a copyright claim if she took the picture or video herself.100 Even if the victim took the images herself, she must register those images with the U.S. Copyright Office before she can request a website to remove the photos or ask Google to remove them from its search results.101 Victims frequently cannot obtain damages for copyright infringement because few victims register their copyrights and thus have no standing to sue.102 The registration issue is exacerbated since many victims are unaware the images were posted,103 and do not learn of their posting within the requisite ninety days.

### A2 Privacy

#### Suing on privacy grounds fails

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Most victims want the offensive material removed and civil suits almost never succeed in removing the images due to the sheer magnitude of dissemination.41 Highly publicized trials often end in re-victimization.42 Civil litigation is expensiv and time-consuming, and many victims simply cannot afford it.43 It is difficult to identify and prove who the perpetrator is for legal proceedings because it is so easy to anonymously post and distribute revenge porn.44 Even when victims can prove who the perpetrator is in court and win money damages, many defendants are judgment-proof so victims cannot collect.45 Although judgment-proof defendants may be subject to injunctive relief, most victims would fail to meet the four requirements. To obtain an injunction, plaintiffs must prove: (1) [they] suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate . . . ; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.46 Further, a court order requiring a defendant or website to remove the images would fail to remove the images from the web entirely, particularly as they appear on numerous sites.47 Because most perpetrators are judgment-proof, and injunctive relief may be difficult to obtain and would ultimately fail to remove the images, civil suits are “poor remedies.”48 As perpetrators frequently have “nothing to lose, which is why they engage in this behavior in the first place,” civil suits do not deter revenge porn.49